JAMIE LYNN GALLIAN
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DEFENDANT, IN PRO PER

UNITED STATES BANKTUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA-SANTA ANA DIVISION

In re JAMIE L GALLIAN, Debtor	Case No.: 8:21-bk-11710-SC **NOTICE OF MOTION AND MOTION TO CONVERT DEBTOR'S CHAPTER 7 TO CHAPTER 13; DECLARATION OF JAMIE LYNN GALLIAN IN SUPPORT IF DEBTORS REQUEST TO CONVERT CHAPTER 7 TO CHAPTER 13; MEMORANDUM POINTS & AUTHORITIES**

TO THE HONORABLE SCOTT C. CLARKSON; JEFFREY I GOLDEN, TRUSTEE FOR THE ESTATE OF JAMIE LYNN GALLIAN; and all interested persons.

Please take Notice that Debtor, on September 10, 2024, Jamie Lynn Gallian filed Debtor's Motion to Covert Chapter 7, Case No. 8:21-bk-11710-SC, to a Chapter 13, under 11 U.S.C. Section 706(a) Bankruptcy Conversion.

INTRODUCTION:

A. 11 U.S.C. Section 706(a) Bankruptcy Conversion

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

At first reading and review, Section 706(a) seems to allow a bankruptcy debtor an "absolute right" to convert from Chapter 7 to Chapter 13.

However, a key Supreme Court decision, *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007), says otherwise. Under *Marrama,* the Debtor must show that they are "eligible" (per Section 109(e)) to obtain relief under Chapter 13.

ELIGIBILTY SECTION 109(e)

"(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than $2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than $2,750,000 may be a debtor under chapter 13 of this title."

The Proposed Plan

A debtor must propose and obtain Court approval of a "plan under which [the debtor] pay[s] creditors out of . . . future income." *Hamilton v. Lanning*, 560 U.S. 505, 508 (2010).

If the debtor makes "all payments under the plan," the debtor earns the right to a discharge and a "fresh start" free from most prior financial burdens. The Chapter 13 bargain is very difficult to achieve and is a sacrifice, a long and tough road lies ahead.

This Chapter 13 Debtor ("Ms. Gallian") believes without a doubt, she *will* make it all the way to completion and a Chapter 13 discharge.

The big question. "WHY"

This is not an "extraordinary case[]" justifying denial of conversion from Chapter 7 to Chapter 13 under the Marrama framework. *See Lane*, 2011 WL 3205782 (debtors permitted to convert from Chapter 7 to Chapter 13 to attempt to save real property). There is no evidence of "fraudulent conduct by the atypical litigant." *Marrama*, 549 U.S. at 374.

The Debtor is "honest but unfortunate." The extreme circumstances of why Debtor filed Chapter 7 originally was because of inaccurate advice given to Debtor by an attorney with a 5-digit bar number.

Debtor agreed to sell her previous personal residence in an adjacent community as part of a Mandatory Settlement Conference on March 2, 2018, *Huntington Beach Gables Homeowners Association vs Sandra L. Bradley et al.* Debtor sold her home on October 31, 2018, after dropping the sales price by $40,000. When she delivered all of the Covenants to the Condominium Sublease and the Ground Leasehold to the new owner she discovered what she knew all along, watching homeowners loosing their homes after purchasing a year earlier.

Ms. Gallian discovered that the recorded 1979 Ground Leasehold she had been paying almost $9000 per year and struggling to pay the Full value of the land and building on the Co. of Orange Real Property Taxes and HOA fees, since November 23, 2009 was illegal and never was recorded against the subdivision 178-771-03, where the condominium project was built in 1980. She complained to the Board of Directors, BSI Investors, the entity that collects the Ground Rent.

The Gables Homeowners Association came after Ms. Gallian, a 22-year Flight Attendant with not so much as a parking ticket on her record, and a credit score in the 700's

After she purchased Space 376, Unit 4, Tract 10542, and moved over to the 55+ Senior Community, known as Rancho Del Rey Mobilehome Estates without the disclosures and knowledge that the Owner and Operator of the Park, was Houser Bros. Co., being the same name also listed on Ms. Gallian's Grant Deed and the Orange County Tax Assessor Bill of the real property she had just sold at 4476 Alderport Drive Unit 53, Huntington Beach, CA 92649.

For over 6 years, Ms. Gallian has been held hostage and not allowed to sell her 2014 Skyline Manufactured Home, and move. The Park refuses to consider any Resident Applicants since January 2019. The park managers cite that "because of the on-going litigation, the park cannot sell the home "in-place".

The Trustee's Argument Against Ms. Gallian Converting to Chapter 13.

Likely Jeffrey I. Golden, Chapter 7 Trustee for the Estate of Jamie Lynn Gallian will dispute the Debtors' eligibility relying on *Marrama.* Mr. Golden will likely contend the Debtors' attempt to switch to Chapter 13 constitutes "bad faith" which justifies denial of her Motion for conversion. Although the Chapter 7 Trustee has [never] filed a Motion for an Order from this Court requiring Ms. Gallian to comply with any request from the Trustee to the Debtor.

Through the Bankruptcy Code, Congress established two main types of consumer bankruptcy: Chapter 7 and Chapter 13. Chapter 7 is what most people think of when they hear the word "bankruptcy protection." In Chapter 7, the debtor turns over most [non-exempt] assets to a trustee — the Chapter 7 trustee then liquidates the [non-exempt] assets and distributes the proceeds for the benefit of creditors. California has two homestead exemptions available to a debtor. The Article 4 or the Article 5. A Debtor may be eligible for one or both or neither.

Typically, after a fairly short time, the debtor receives a discharge of most of the debtor's debts and the debtor moves on in life. The "typical Chapter 7 case" is not the experience of Ms. Gallian. Ms. Gallians' three year experience since the July 9, 2021 filing for Chapter 7 bankruptcy protection has been [atypical].

The second type of consumer bankruptcy protection, the Chapter 13, a type of reorganization. Chapter 13 "affords individuals receiving regular income an opportunity to obtain some relief from their debts while retaining their property." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 498 (2015). The quid pro quo is the Chapter 13 plan.

In the current case at bar, Ms. Gallian's Chapter 7 bankruptcy case has not gone well for this Pro Se Debtor, for the past three years of the case. Ms. Gallian did not obtain her Chapter 7 discharge as expected. Ms. Gallian is 62 years old, a single middle-aged woman, with a high-school education. Ms. Gallian is keenly aware she miserably fails at legal procedures, can't stay on point and easily digresses and has a bad habit of interrupting speakers. (because of a frontal lobe injury to her brain when she was 10 years old).

DECLARATION OF JAMIE LYNN GALLIAN

However, there is no one standing in front of her, nor behind her, nor is there anyone standing on either side of her. It's just her.

In or about December 19, 2022, this Debtor saw a bit of light through to the other side to bankruptcy protection, and most recently on May 15, 2024, after over 2 years of litigation relating to Ms. Gallian's Homestead Exemption, United States Bankruptcy Judge, Honorable Erithe A. Smith put to issue to rest whether the Debtor was entitled to her homestead exemption. Judge Smith found that Ms. Gallian met the dwelling occupancy requirements and has lived in her personal residence since she purchased it with exempt funds on November 1, 2018, Houser and the joinders never claimed that Debtor lived elsewhere, notwithstanding two weeks later registered the Certificate of Title to the 2014 Skyline Manufactured Home to her LLC J-Sandcastle Co. **Judge Smith further found that the home [was not] property of the Debtor's bankruptcy estate, because on the petition date 7/9/2021, the home was Registered to the LLC J-Sandcastle Co. and not Debtor.** ***Docket 274, and Docket 348.*** However, Judge Smith found that Debtor's argument was made in Debtor's Opposition filed 6/1/2022, to Objection to Debtors Claimed Homestead was not properly consider and was the court's error, finding Debtor qualified for an Automatic Exemption under §§ 704.720(a) and §§ 704.730(a), Debtor is entitled to a homestead exemption in the amount of $600,000.

Many years into the bankruptcy case, the Chapter 7 trustee, Jeffrey I. Golden (the "Chapter 7 Trustee") recently determined that he might be able to sell Mr. Gallian's current primary residence home. The Debtor does not want to lose her home. So, Debtor files this "Motion to Convert" requesting authorization to switch from Chapter 7 liquidation to Chapter 13 reorganization and thereby retain her Space 376 2014 Skyline manufactured home, LBM 1081. Ms. Gallian relies on Section 706(a) which generally allows a debtor to "convert" a case from Chapter 7 to Chapter 13 "at any time."

Signed under penalty of perjury this 10th day of September 2024.

Jamie Lynn Gallian
JAMIE LYNN GALLIAN

Debtors' ability to convert from Chapter 7 to Chapter 13

Ultimately, the Court must decide whether the Debtors may convert from Chapter 7 to Chapter 13. After analyzing the facts and law, Debtor respectfully request the Court find that the Debtor is eligible to obtain relief under Chapter 13 and that her effort to convert does not constitute "bad faith."

As a result, the Debtors may convert to Chapter 13. Of course, that does not end the story because the Debtors still have a long way to go. They must propose and confirm a Chapter 13 plan to pay their creditors. And, then they will need to complete their Chapter 13 plan.

The Debtor is trying to save her home she lives in as her protection, merely trying to save her home by converting to Chapter 13 and engaging in the hard bargain of paying their creditors over five years through a Chapter 13 plan. Ms. Gallian should be the opportunity and right to try to obtain such relief in Chapter 13 although, ultimately, she will need to meet all the confirmation requirements under Section 1325(a).

The Debtor believes she will succeed. The Debtor should have the right to try Chapter 13. Her efforts are not an abuse of the provisions, purpose, or spirit of Chapter 7, Chapter 13, or the Bankruptcy Code.

Rather, the Debtor is endeavoring on this tough journey to avail themselves of the benefits of Chapter 13 which Congress afforded to honest but unfortunate debtors.
Ms. Gallian's request should not be seen as bad faith.

I declare under the penalty of perjury the foregoing to be true and correct.

Signed this 10th day of September 2024.

Jamie Lynn Gallian
JAMIE LYNN GALLIAN

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
16222 MONTEREY LANE, UNIT 378 HUNTINGTON BEACH, CA 92649

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION FOR** (*specify name of motion)*
DEBTORS MOT TO CONVERT 7 TO CHAPTER 13; MP&S, DECLARATION OF JAMIE LYNN GALLIAN ISO

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 09/10/2024 , I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) ___________, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) ___________, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

09/10/2024	JOSEPH CLARK	Joseph Clark
Date	*Printed Name*	*Signature*

ADDITIONAL SERVICE INFORMATION (if needed):

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